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**Judiciary Committee**

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**HB 2562**

**Title:** An act relating to foreclosures on deeds of trust.

**Brief Description:** Concerning foreclosures on deeds of trust.

**Sponsors:** Representative Upthegrove.

**Brief Summary of Bill**

- Requires a trustee to serve a notice of trustee sale on occupants and tenants at least 90 days before the sale is conducted, whether or not a rental agreement is in place.
- Requires a notice of trustee sale to include contact information for the purchaser and the person to whom lease payments and correspondence should be sent by occupants and tenants until notified otherwise by the purchaser.
- Postpones the purchaser's right to possess property obtained through a trustee sale, where the occupants are in compliance with the Landlord-Tenant Act, until 1) the expiration of the rental agreement or 120 days following the trustee sale, whichever is earlier, or 2) in the absence of a rental agreement, 90 days following the trustee sale.
- Provides that the term "rental agreement" has the same meaning as in the Residential Landlord-Tenant Act.

**Hearing Date:** 1/18/08

**Staff:** Lara Zarowsky (786-7123).

**Background:**

*Mortgages and Deeds of Trust*

Mortgages and deeds of trust are two forms of security interest in real property used for real estate financing. A mortgage is a pledge of real property as security for a debt owed to the debtor

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

(mortgage). A mortgage creates a lien on the real property. A mortgage may be foreclosed only through a judicial proceeding according to detailed statutory requirements and procedures.

A deed of trust is, in essence, a three-party mortgage. The borrower (grantor) grants a deed creating a lien on the real property to a third party (the trustee) who holds the deed in trust as security for an obligation due to the lender (the beneficiary). The deed of trust transfers title to the borrower, yet the trustee has a lien against the property until the borrower pays off the obligation in full.

A major distinction between a deed of trust and a mortgage is that a deed of trust may be foreclosed without a judicial proceeding. If the borrower defaults on the obligation, for example by failing to make a payment under the deed of trust, the trustee may foreclose on the property by conducting a public trustee sale when the required procedural and notice requirements are met.

#### *Purchaser's Right of Possession*

The purchaser of property at a trustee sale is entitled to possession of the property on the 20th day following the sale. The right to possession is enforceable against the grantor of the deed of trust and anyone having an interest junior to the deed of trust, including occupants and tenants of the property. The purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act after the 20th day following the sale.

An unlawful detainer action is a special statutory procedure commonly used by landlords to recover real property. An unlawful detainer action allows the landlord to quickly terminate the tenancy and regain possession of the property if the tenant does not vacate the property after being served with a notice to vacate. An unlawful detainer action is a summary proceeding that limits the damages and remedies available to the landlord and tenant but also provides for a pretrial hearing to determine whether possession should be immediately restored to the landlord. Unlawful detainer proceedings are entitled to priority over other civil cases in the trial setting process.

#### *Landlord-Tenant Act*

The Residential Landlord-Tenant Act (RLTA) governs the relationship between landlords and tenants of residential dwelling units, establishes the duties and liabilities of the parties, and provides procedures for each side to enforce its rights.

The landlord may terminate a tenancy if there has been a substantial noncompliance with the tenants's duties, such as nonpayment of rent. The landlord must give the tenant written notice before termination and, depending upon the circumstances, allow the tenant time to come into compliance. If the tenant does not comply and continues to be in possession of the property, the landlord may bring an unlawful detainer action.

#### Notice Requirements to Tenants and Occupants

Before a public trustee sale may take place, the occupants of property consisting of single-family residences, condominiums, cooperatives or other dwelling units in a multiplex or other building containing fewer than five residential units must receive notice. A "Notice of a Trustee's Sale" must be mailed to the occupants, by either certified or registered mail with return receipt requested, at least 90 days before the sale.

#### Possession by Purchaser and Eviction of Tenants and Occupants

The purchaser at a public trustee sale is entitled to possession of the property on the 20th day following the sale and may evict occupants and tenants pursuant to an unlawful detainer action after the 20th day following the sale.

**Summary of Bill:**

The term "rental agreement" has the same meaning as in the Residential Landlord-Tenant Act.

Notice Requirements to Tenants and Occupants

At least 90 days before a trustee sale, the trustee must serve a copy of the "Notice of Trustee's Sale" on all occupants and tenants of the property.

The "Notice of Trustee's Sale" must include means for the occupants or tenants to obtain contact information for the purchaser of the property at the trustee sale, and the location to which lease or rental payments are to be transmitted until notified otherwise by the purchaser of the property.

Possession by Purchaser and Eviction of Occupants and Tenants

The purchaser of property at a trustee sale may evict occupants and tenants by summary proceedings under the following conditions and time allowances after the public trustee sale:

1. Occupants and tenants with a rental agreement who are, and continue to be, in compliance with the RLTA, may be evicted after the 120th day following the sale or the expiration of the lease, whichever is sooner.
2. Occupants and tenants without a rental agreement who are, and continue to be, in compliance with the RLTA may be evicted after the 90th day following the sale.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.